उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(26)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO. 417 OF 2004

Appellant Accused (In Jail)	:	Kamlesh Kumar, S/o. Meghu – Ram Bhartiya, aged 19 years, Occupation – Labour, Resident of Villagee – Hemabandh, Police Station – Nawagarh, District – Durg (C.G.)
	Versus	
Respondent Prosecution	:	State of Chhattisgarh, Through Incharge Officer, Police Station – Nawagarh, District – Durg (C.G.)

Present

Mr. Prafull Bharat, counsel for the appellant.
Mr. Arun Sao, GA for the State/respondent.

ORAL JUDGMENT

(29th November 2007)

Dhirendra Mishra, J

This criminal appeal is directed against the judgment of conviction and order of sentence dated 16th April 2004 passed in S.T.No. 71/2004 whereby learned II Additional Sessions Judge (FTC), Bemetara, Durg has convicted the appellant under Section 376(1) read with Section 511 of the IPC and sentenced him to undergo RI for five years, pay a fine of Rs.2000/- and in default of payment of fine to undergo additional RI for six months.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

2. Case of the prosecution, in brief, is that when the prosecutrix had gone to her field for guarding her gram crop, the accused took her to the field of Phooldas and attempted to commit rape with her after taking out her underwear and after undressing himself. She narrated the incident to her mother after returning from the field and thereafter, the prosecutrix along with her father Ishwari Prasad (PW-3) lodged a report on 31.12.2003 itself at about 21.30 hours in Police Outpost Dadi. On the basis of Dehati Nalishi crime was registered on 1.1.2004 in Police Station Navagarh vide document of Ex.P/14. During investigation the prosecutrix was sent for medical examination to Govt. Hospital, Bemetara where Dr. Rajshree Devdhar (PW-6) examined the prosecutrix and gave her report of Ex.P/10. Wearing apparel of the prosecutrix i.e. underwear seized during investigation was also sent for examination and her report is Ex.P/11. The accused was also sent for medical examination and his medical examination report is Ex.P/12.

3. After completing investigation charge sheet was filed in the Court of Judicial Magistrate First Class, Bemetara and the same was received on transfer for trial by learned Additional Sessions Judge, Bemetara.

4. During trial the prosecution examined 10 witnesses in all. Thereafter, statement of the accused was recorded in which he

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denied the evidence appearing against him in the prosecution case and pleaded innocence and false implication. However, learned trial Court after hearing counsel for the respective parties convicted and sentenced the accused/appellant as mentioned in paragraph 1 of this judgment.

5. Learned counsel for the appellant submits that from perusal of statement of the prosecutrix particularly paragraphs 14 & 15, it is evident that at the time of alleged incident number of independent witnesses namely Archana, Sushmita, Urvashi-daughter of her uncle Keshri Prasad were present, however, none of the above persons has been examined during trial. Even their diary statements have not been recorded. There is evidence available on record that father of the appellant is head of the community and about one year prior to the date of incident uncle of the prosecutrix Keshri Prasad was ousted from the society by the Caste Panchayat and because of the above animosity the appellant has been falsely roped in the aforesaid crime.

6. Referring to the statement of Prandas (PW-4) and Meelbai (PW-5) it is argued that the prosecutrix did not tell about the alleged attempt of rape to these witnesses. It is further argued that mother of the prosecutrix has claimed that report of the incident was lodged only on the next day i.e. 1.1.2004 whereas report was in fact lodged on 31.12.2003 in the Police Outpost Dadi.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश ५	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

7. On the other hand, learned counsel for the State supporting the impugned judgment argued that version of the prosecutrix is duly corroborated from the statements of Prandas (PW-4) and Meelbai (PW-5) as also from the statement of PW-2 Panchbai - her mother and PW- 3 Ishwari Prasad - her father. Her version is also corroborated from the statement of Dr. Rajshree Devdhar (PW-6) who has examined the prosecutrix and noticed reddishness on her vagina as also in the internal part of her vagina.

8. I have heard learned counsel for the respective parties and have perused the material available on record including the impugned judgment of the trial Court.

9. The prosecutrix is an eight year old ~~girl~~ girl. After preliminary examination the trial Court has recorded his satisfaction that she answers the questions with understanding and as such, she is competent to depose. She has deposed that on the date of incident she had gone on guard duty of her crop where the accused took her on the pretext of going to home, thereafter, made her lie on the ground, took out her underwear and attempted to insert his male organ in her vagina. She further stated that the accused had also threatened her not to disclose this fact to anyone. Thereafter, she returned from there and met Meelbai and Prandas on way and narrated the incident to them. She also narrated the incident to her mother Panchbai and thereafter, she went along with her

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father to lodge the report in police station. In paragraph 14 she has admitted that other three girls were also present in the vicinity where she had gone on guard duty and all of them had returned in the evening. It is not the case of the prosecution that the incident was witnessed by the above named persons or the prosecutrix narrated the incident to those persons, who have been named in paragraph 14 & 15 of her statement and there is no evidence available on record that they in fact had an occasion to witness the incident. Therefore, non-examination of these witnesses will not impeach the credibility of the prosecutrix particularly when her testimony is corroborated from the medical evidence. The discrepancy in the statement of mother of the prosecutrix that report was lodged in the following day at Police Outpost Dadi is also of no consequence because the First Information Report was lodged on 31.12.2003 itself by father of the prosecutrix who has stated that he accompanied the prosecutrix to the police outpost immediately after the incident and lodged the report.

10. So far as the reason for false implication of the accused that uncle of the prosecutrix Keshri Prasad was having animosity against father of the appellant, who is head of the community as he was penalized by the Caste Panchayat, therefore, the appellant has been roped in a false case, is concerned, it does not appeal to reason that a father shall put the honour of his own daughter, aged about 8 years, at stake to wreak vengeance on account of

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	some incident allegedly occurred one year prior to the above incident and that too, with the uncle of the prosecutrix. 11. On the basis of aforesaid analysis, this Court is of the considered opinion that version of the prosecutrix inspire confidence. Her testimony is duly corroborated from the statements of other witnesses including her parents and two independent witnesses and it is further corroborated from the medical evidence as also the promptly lodged FIR. There is no illegality or infirmity in the impugned judgment of the trial Court convicting the appellant under Section 376(1) r/w Section 511 of the IPC and sentencing him accordingly. 12. In the result, the appeal being devoid of substance is liable to be dismissed and is accordingly, dismissed. Sd/- Dhirendra Mishra Judge	